

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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D.W.M., a minor by Willie Moore,
his father, and Ursula Moore, his mother,
D.D.M., a minor by Willie Moore,
his father, and Ursula Moore, his mother,
and WILLIE MOORE and URSULA MOORE,

Plaintiffs,

-against-

ST. MARY SCHOOL, BIAGIO M.
ARPINO, Principal of St. Mary School, and
THE ROMAN CATHOLIC DIOCESE OF
ROCKVILLE CENTRE, KERRI
LECHTRECKER, individually and as the
mother of L.M., an infant, MIKE JONES
and CHRISTINE JONES, individually and
as parents and natural guardians
of M.J., an infant, and KRZYSZTOF MARS
and DOROTA MARS, individually and as
the parents and natural guardians of M.M.,
an infant,

Defendants.

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**ANSWER OF INFANT
M.J.**

Civil Action No.
2:18-cv-03099 (DRH)
(GRB)

Defendant, infant M.J., by and through his parents and natural guardians, MICHAEL
JONES and CHRISTINE JONES, appears, through his attorneys, Guercio & Guercio, LLP, and
answers the Fifth Amended Complaint ("Complaint") as follows:

1. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 1 of the Complaint.
2. Denies each and every allegation contained in Paragraphs 2-5 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 6-7 of the Complaint.
4. Denies each and every allegation contained in Paragraphs 8-9 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 10-16 of the Complaint.

6. Denies each and every allegation contained in Paragraphs 17-18 of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 19-24 of the Complaint.

8. Admits the allegations contained in Paragraphs 25-26 of the Complaint.

9. Denies each and every allegation contained in Paragraph 27 of the Complaint and reserves questions of law to this Court.

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 28-65 of the Complaint.

11. Denies each and every allegation contained in Paragraphs 66-67 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 68-71 of the Complaint.

13. Denies each and every allegation contained in Paragraph 72 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 73-75 of the Complaint.

15. Denies each and every allegation contained in Paragraph 76 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 77-84 of the Complaint.

17. Denies each and every allegation contained in Paragraph 85 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 86-89 of the Complaint.

19. Denies each and every allegation contained in Paragraphs 90-109 of the Complaint.

20. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 110-128 of the Complaint.

21. Denies each and every allegation contained in Paragraphs 129-130 of the Complaint.

22. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 131-136 of the Complaint.

23. Denies each and every allegation contained in Paragraphs 137-138 of the Complaint.

24. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 139-202 of the Complaint.

25. Denies each and every allegation contained in Paragraph 203 of the Complaint.

26. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 204-242 of the Complaint.

27. Denies each and every allegation contained in Paragraphs 243-250 of the Complaint.

28. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 251-276 of the Complaint.

29. Denies each and every allegation contained in Paragraphs 277-285 of the Complaint.

30. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 286-291 of the Complaint.

31. Denies each and every allegation contained in Paragraphs 292-295 of the Complaint.

RESPONSE TO THE FIRST CAUSE OF ACTION

32. Dismissed by Memorandum & Order dated August 27, 2019.

RESPONSE TO THE SECOND CAUSE OF ACTION

33. Dismissed by Memorandum & Order dated August 27, 2019.

RESPONSE TO THE THIRD CAUSE OF ACTION

34. Dismissed by Memorandum & Order dated August 27, 2019.

RESPONSE TO THE FOURTH CAUSE OF ACTION

35. Dismissed by Memorandum & Order dated August 27, 2019.

RESPONSE TO THE FIFTH CAUSE OF ACTION

36. Denies each and every allegation as inapplicable to answering Defendant, and refers all questions of fact and law to the Court in this matter.

RESPONSE TO THE SIXTH CAUSE OF ACTION

37. Denies each and every allegation as inapplicable to answering Defendant, and refers all questions of fact and law to the Court in this matter.

RESPONSE TO THE SEVENTH CAUSE OF ACTION

38. Denies each and every allegation and refers all questions of fact and law to the Court in this matter.

RESPONSE TO THE EIGHTH CAUSE OF ACTION

39. Dismissed by Memorandum & Order dated August 27, 2019.

RESPONSE TO THE NINTH CAUSE OF ACTION

40. Dismissed by Memorandum & Order dated August 27, 2019.

RESPONSE TO THE TENTH CAUSE OF ACTION

41. Denies each and every allegation as inapplicable to answering Defendant, and refers all questions of fact and law to the Court in this matter.

FIRST AFFIRMATIVE DEFENSE

42. Plaintiffs fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

43. Plaintiffs have failed to establish that they suffered any damages whatsoever.

THIRD AFFIRMATIVE DEFENSE

44. The Complaint fails to comply with the pleading requirements of FRCP 8 and is therefore a nullity.

FOURTH AFFIRMATIVE DEFENSE

45. The Plaintiffs are barred by one or more applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

46. The Plaintiffs have not pleaded a cognizable tort in the State of New York and therefore cannot recover under any theory of law.

SIXTH AFFIRMATIVE DEFENSE

47. The Plaintiffs' claims are barred by the doctrine of waiver and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

48. The Plaintiffs have failed to mitigate any alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

49. The Plaintiffs' claims are barred by the doctrine of contributory negligence.

NINTH AFFIRMATIVE DEFENSE

50. The Plaintiffs cannot establish one or more necessary elements to support a cause of action for Intentional Infliction of Emotional Distress.

WHEREFORE, the answering Defendant demands that the sole remaining claim against him be dismissed, with prejudice, and for such other relief as the Court deems just and proper, including awarding Defendant the costs of this action, plus reasonable attorneys' fees.

Dated: Farmingdale, NY
September 10, 2019

_____/s/_____
CHRISTOPHER F. MESTECKY
(CM 6598)

TO: Clerk of Court
All Parties

VIA ECF

GGDOCS-404906374-312

CERTIFICATE OF SERVICE

The undersigned, an attorney of record herein, hereby certifies that on September 10, 2019, the foregoing Answer of Infant M.J., was served via ECF to the following person(s):

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_____/s/_____
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